

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 3

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Chapter 4, Subchapter 7, Article 109, Sections 5161 and
5164(a), (b), (c), and (d) of the General Industry Safety Orders

Storage of Hazardous Substances**SUMMARY**

On September 28, 2000, a Cal/OSHA Form 9, Request for New, or Change in Existing, Safety Order, was submitted to the Division of Occupational Safety and Health, Research and Standards Development Unit, requesting amendments to the definition of hazardous substances and the storage requirements for hazardous or potentially hazardous materials contained in Sections 5161 and 5164 of the General Industry Safety Orders. This request was made in response to citations and Appeals Board hearings involving the incompatible storage of hazardous substances, and the related existing Title 8 requirements which were found to be inadequate and/or unclear by compliance personnel and the regulated public.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

The specific purpose of this rulemaking proposal is to provide clarity to the definition of hazardous substance, specify the location of similar definitions elsewhere in Title 8, and clarify the requirements for storing hazardous substances.

This proposed rulemaking action contains minor, non-substantive, editorial and grammatical revisions that are not all discussed in this Informative Digest. However, these revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Section 5161. Definitions.

Section 5161 contains the definitions applicable to Article 109, Hazardous Substances and Processes. Section 5161 defines hazardous substances as "A substance which by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritant; or otherwise harmful is likely to cause injury. An additional definition, for Hazard Communication purposes only, will be found at section 5194(c)."

Revisions are proposed to add the terms “material, or mixture” after the phrase “A substance” to clarify that something other than a substance, which has a specific chemical meaning, can be hazardous, and add “or illness” at the end of the first sentence to clarify that hazardous substances may also cause illness.

It is also proposed to add the sentence “Hazardous substance includes hazardous waste as defined in section 5192(a)(3)” in order to clarify that hazardous waste is also considered a hazardous substance and must be stored accordingly. In addition, it is proposed to revise the last sentence to read, “Additional definitions are found in sections 5194(c), for Hazard Communication purposes only, and 5192(a)(3), for Hazardous Waste Operations purposes only.” This revision is necessary to clarify that a third definition of hazardous substance may be found in Section 5192 which is specific to “Hazardous Waste Operations and Emergency Response.”

The proposed revisions are necessary to emphasize to employers that “hazardous substances” include hazardous waste and other materials, or mixtures of materials that if improperly stored could jeopardize the health and safety of employees.

Section 5164. Storage of Hazardous Substances.

Section 5164 outlines the storage requirements for hazardous substances. Subsection (a) states that substances which, when mixed, react violently, or evolve toxic vapors or gases, or which in combination become hazardous by reason of toxicity, oxidizing power, flammability, explosibility, or other properties, shall be separated from each other in storage by distance, by partitions, or otherwise, so as to preclude accidental contact between them. A note to this subsection provides typical examples of incompatible substances.

A revision is proposed to make two sentences out of existing subsection (a): one describing a hazardous substance, adding the requirement that such substances be evaluated before storing; and the other addressing how “incompatible substances” are to be separated when stored, adding dikes, berms, and secondary containment as separation options. The proposed revision is necessary to ensure employers evaluate the potential hazard of substances prior to storage and provide additional separation options for storage purposes.

Existing subsection (b) requires hazardous substances be stored in containers which are chemically inert to and appropriate for the type and quantity of the hazardous substance. A revision is proposed to add the phrase “such as those approved by the U.S. Department of Transportation (DOT)” to describe the types of containers that may be used to store hazardous substances. The proposed revision is necessary to clarify the types of containers that are considered adequate for the safe storage of hazardous materials.

Existing subsection (c) requires that containers of hazardous substances shall not be stored in such locations or manner as to result in damage to the container, and that containers are not to be stored where they are exposed to heat sufficient to rupture the container or cause leakage. A revision is proposed to the first sentence of this subsection which will clarify that containers of hazardous substances are not to be stored in such locations or manner as to result in “physical” damage to “or

deterioration of” the container. The proposed revision is necessary to clarify the types of damage to containers that an employer must prevent when considering how and where to store containers of hazardous substances.

Existing subsection (d) requires that containers used to package a substance which gives off toxic, asphyxiant, suffocant, or anesthetic fumes in hazardous amounts (e.g., fuming sulfuric acid, hydrofluoric acid, compressed or liquefied toxic gases) are not to be stored in locations where it could be reasonably anticipated that employees would be exposed. It is also stated that this requirement does not apply to small quantities of such materials kept in closed containers, or to tank cars or trucks. A revision is proposed to include “gases, or vapors”, along with anesthetic fumes, to the list of emissions that can be given off from a substance in hazardous amounts; and “poisonous” and “corrosive” to the description of the types of fumes, gases, or vapors which pose a hazard. It is also proposed to add the terms “nitrous oxide, chlorine, or other” to the examples of compressed or liquefied gases provided in this subsection. The proposed revisions are necessary to increase the employer’s awareness of the types of substances which emit hazardous airborne contaminants, and that these contaminants may be in the form of gases or vapors which could also be corrosive or poisonous.

DOCUMENTS RELIED UPON

- State of California Memorandum (with attached Cal/OSHA Form 9), to Rod Repke, Research and Standards Development Unit, from Tom Hanley, Regional Manager, Region III, dated September 28, 2000.
- U. S. Department of Transportation (DOT) regulations: 49 CFR Part 172 (§172.101).

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No adverse impact on small businesses is anticipated from the implementation of the proposed amendments. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulations does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to these regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.